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BOOK REVIEW

A REVIEW OF LOUISE ELLEN TEITZ'S *TRANSNATIONAL LITIGATION*

*Raymond Michael Ripple**

*We shall proceed more surely toward the ideal body of precepts for the future if we start from the best possible statement of what we have been able to achieve up to date.*¹

Roscoe Pound's adage is a truism in American jurisprudence and perhaps epitomizes the purpose and scope of Professor Louise Ellen Teitz's volume on transnational litigation.² Her book professes to target practitioners and students, to synthesize "the broad range of issues covered by transnational litigation."³ The work does accomplish the task, but it also raises questions of its utility to its intended audience. It also fuels the debate on whether international civil or transnational litigation has matured to a point of recognition as a distinct field of study and practice.

One of the principal premises for the book, as it is for other scholarly works in this area, is that the globalization of trade is causing increased frequency of products liability and contractual disputes that span great distances and routinely cross national borders. There is little empirical data on the point, but those engaged in any degree of sophisticated civil litigation for the past twenty or so years can attest to the fact. The apothegm that the law and disputes follow commerce appears to validate the author's premise.⁴

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1 ROSCOE POUND, *THE FORMATIVE ERA OF AMERICAN LAW* 166 (1938).

2 LOUISE ELLEN TEITZ, *TRANSNATIONAL LITIGATION* (1996).

3 *Id.* at ix.

4 Recently, the Third Circuit noted the shift of the flow of litigation to follow the international affairs of business and individuals when, in deciding that federal courts have diversity jurisdiction when aliens are both plaintiffs and defendants, the court

The topic of the book is not unique in that the process of international litigation has had increasing attention during this decade, both in bound volumes and learned articles. What is different about this work is Professor Teitz's approach. Most other texts, such as that authored by Gary Born and David Westin,⁵ are variations on the theme of traditional teaching texts with a combination of cases, commentary, and heavily-laden footnotes. Although the texts that preceded the Teitz book do have much to offer the practitioner, they are basically "teaching books."⁶ Professor Teitz's work, however, while covering basically the same material, is organized more in a dispositive, encyclopedic fashion of a traditional treatise. In its own way, the book is a serious attempt to pull together the essentials of many far-reaching topics that may bear on the management of a lawsuit that crosses national boundaries in any of its various phases.

Not only is the format of the work markedly different from the prior texts in the area, but it also provides a decidedly complementary rendition of the essential principles of transnational litigation. It sets forth the basic materials in a relatively easy to read fashion, without the need to hunt through the usually over-edited text of the principle cases. Most of the leading authorities are in footnotes, together with some explanatory text and occasional quotes from cases and statutes.

Where the book seems to fall short is as a primary pedagogical tool. The lack of essential case language in such areas as personal jurisdiction, where so much of the current thinking is based on case study, will leave the first level professional student at somewhat of a loss. Nevertheless, as a hornbook or supplemental text it should prove invaluable to the teaching and learning of such a multi-faceted subject.

On first view, the size of the volume appears to be daunting, a tome of nearly six hundred pages, hardly a cyclopedia of an emerging area of law. More careful examination reveals a text of a little less than three hundred pages and a nearly equal compilation of appendi-

noted, "Given the globalization of the United States economy, and the fact that citizens of the United States are becoming increasingly involved in international transactions, the need for impartial national tribunals remains unchanged." *Dresser Indus., Inc. v. Underwriters of Lloyd's of London*, 106 F.3d 494, 500 (3d Cir. 1997). A few years ago, the Eighth Circuit made a similar observation. *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 615 (8th Cir. 1994).

5 GARY B. BORN WITH DAVID WESTIN, *INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS: COMMENTARY AND MATERIALS* (2d ed. 1994).

6 For a cogent survey of the most recent texts, see Professor Linda Silberman, *International Litigation: A Teacher's Guide*, 89 AM. J. INT'L L. 679 (1995) (book review).

ces. But this is not to take away from the scholarly cataloging of the relevant principles of this material.

To a certain extent, the appendices are a strength of the work in that they bind together the dispositional and analytical materials with the primary and principal documents in this field. Most of the major primary sources used by United States practitioners are there, together with the most oft referenced U.S. statutes.⁷ Very helpful are the current regulations of the State Department on the use of diplomatic channels for service⁸ and taking depositions abroad.⁹ For all but the most seasoned specialist, these are difficult to find in the Code of Federal Regulations, especially when your little yellow post-its have somehow disappeared since your last need to reference such details. For the student, it is a good first view of the language of the trade.

That is not to say that the appendices are not a bit cluttered. The reproduction of Rule 4 of the Federal Rules of Civil Procedure and its 1993 Advisory Committee Notes is superfluous.¹⁰ The inclusion of forms for Notice of Lawsuit and Waiver of Service fare no better.¹¹ These inclusions leave one with the abiding feeling that the author wanted to create not only a useable work for the practitioner but also a one volume manual or *vade mecum* for those in the trenches of international legal conflict. While these materials may have at least some passing interest to the student, their inclusion adds little assistance to the litigator with even a modicum of experience. They detract from what is otherwise a good work aimed at a healthy cross-section of the bench and bar.

An outstanding component of the appended materials is what the author calls the "Chart of State Laws and Cases."¹² This prodigious undertaking collects the state statutes and case authority on four important areas for any practitioner working in this field: long-arm, forum non conveniens, Uniform Foreign-Money Claims Act,¹³ and the Uniform Foreign Money-Judgments Recognition Act.¹⁴ The spreadsheet fashion of the compilation is highly readable and a good quick reference.

7 See Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602-1611 (1994); 28 U.S.C. § 1696 (1994) (regarding service in foreign and international litigation); 28 U.S.C. § 1781 (1994) (regarding transmittal of letter rogatory or request).

8 TERTZ, *supra* note 2, at 315.

9 *Id.* at 479-94.

10 *Id.* at 319-36.

11 *Id.* at 337-40.

12 *Id.* at 295-305.

13 *Id.* at 507-13.

14 *Id.* at 503-05.

The very worth of the charted authorities highlights the need for the serious practitioner to realize that Professor Teitz's work may be a core reference when one engages in transnational practice. But the successful mastering of just the procedural part of an international practice will demand the familiarity with, reference to, and respect for a shifting array of source material and authorities. Transnational implications of a litigation may entail a single *ex juris* deposition or may permeate the entire process to the point where the majority of legal activity and focus of analysis is outside of the country of trial. This type of practice is simply not for those who have less than a well-grounded experience in and keen interest in the litigation process and its procedures.

Professor Teitz's chart also highlights another reality that is also clear from perusal of her text. In the United States, the laws of the states govern much of the dispute. Even when the action is brought in federal court, it is invariably there by diversity (either originally or by removal). In addition, in areas such as enforcement of judgments, the federal court will look to state law. The old problems that plague diversity practice are still with us.

I. QUESTIONS NOT RAISED

Although the author does not specifically focus on it, the existence of this book raises at least two interesting questions beyond its own subject matter. For some time there has been debate over whether transnational litigation constitutes a distinct or discrete field of law or merely a useful combination of elements of a number of fields.¹⁵ The text also raises the question of whether the evolving law is properly denominated "transnational litigation."

Although Professor Teitz may have overdrawn the rapidity of the increase of transnational cases since the decision in *The Bremen v. Zapata Off-Shore Co.*¹⁶ in 1972,¹⁷ it is clear that the volume adds significantly to the body of knowledge related to litigation that reaches across national frontiers. While the author provides little new insight into many of the issues facing litigators in such cases, her systematizing of the current precedents not only fills a void in the scholarship and practice aids, but also has strengthened the argument that "transnational litigation" has reached a stage of maturity where it deserves special recognition from the academy and the bar.

15 See Silberman, *supra* note 6, at 680.

16 407 U.S. 1 (1972).

17 TEITZ, *supra* note 2, at 1.

As recently as 1991, Professor Stephen Burbank was not yet persuaded that "international civil litigation is a discrete field."¹⁸ He sided with the earlier writings of Professor Lowenfeld.¹⁹ These scholars espouse the position that international civil litigation is more appropriately viewed as "part of a process of cross-fertilization" of the experience and needs of domestic and international civil litigation.²⁰ Transnational or international litigation is viewed as a progression of pragmatic development of devices by domestic courts to deal with the exigencies of dealing with parts of litigation that happen to spill over national borders.²¹ No doubt there is some value to such an analysis and validity to its observations, especially when viewed from the point of a domestic practitioner or academe. The history of the development of ways of dealing with extra-national components of a lawsuit is a story of accommodation and adaptation by American courts. We have seen this at least as far back as the Supreme Court's dealing with the question of recognition of the judgment of another nation.²² The obverse of how procedural devices forged to manage international litigation problems have greatly changed American domestic law are probably harder to make out. Burbank, however, makes a cogent argument that such major decisions as *Asahi Metal Industries Co. v. Superior Court of California*²³ redirected the constitutional analysis of judicial jurisdiction.²⁴

Nevertheless, this cross-fertilization analysis, even conceding its validity, begs the ultimate question whether the study of international or transnational litigation has now reached the point of status of a field in itself. Without getting too deeply into the scholastic controversy, one must be impressed by the more recent postulation that the mere proliferation of learned works on the subject is important evidence of the emerging distinctness of international or transnational

18 Stephen B. Burbank, *The World in Our Courts*, 89 MICH. L. REV. 1456, 1459 (1991) (reviewing GARY B. BORN WITH DAVID WESTIN, *INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS: COMMENTARY AND MATERIALS* (1989)).

19 See Andreas F. Lowenfeld, Comment, *Sovereignty Jurisdiction, and Reasonableness: A Reply to A.V. Lowe*, 75 AM. J. INT'L L. 629 (1981).

20 See Burbank, *supra* note 18, at 1459.

21 Professor Burbank attempts to capture the essence of this theory: "[The] process of cross-fertilization [entails] . . . (1) doctrine and techniques developed in the context of domestic cases are brought to bear on problems presented in international litigation, and (2) the increasing international dimensions of litigation in our courts prompt changes in doctrine and techniques, which are then applied in domestic cases." *Id.*

22 See *Hilton v. Guyot*, 159 U.S. 113 (1885).

23 480 U.S. 102 (1987).

24 Burbank, *supra* note 18, at 1471.

litigation.²⁵ The Born and Westin treatise is in its third edition,²⁶ and Professor Weintraub has a recent text on international litigation and arbitration,²⁷ matched by an equally good offering by Lowenfeld on the same subject.²⁸ The prolific Professor Lowenfeld has also authored a recent tome of essays on private international law.²⁹

To this bevy of scholarship we now add Professor Teitz's present work. In its lack of theoretical and analytical scholarship, her materials are not the equal of the well-established savants noted above, but she makes a unique contribution to this developing field both by the complementary nature of her encyclopedic work and by the fact that the mere existence of this type of book adds credence to the existence of a distinct field of learning and practice. Notwithstanding Professor Burbank's somewhat theoretical analysis, it would be difficult now to argue that international or transnational litigation has not attained that special prominence of a distinct field of legal study and practice.

The recognition of the distinct nature of the field of international litigation is of some significance beyond the bastions of the academy. Specialization of the practice will grow with the recognition of the distinction, with its own innovation that can only be found in the actual application of the principles. Also, the bench, which fashions or at least issues the imprimatur for the tenants of the legal principles, will recognize that distinct problems do turn up in this type of case and will increasingly be sensitive to fashion procedures directed to the demands of the domestic forum and the exigencies of the wider arena in which parts of the case are played out.

The additional broad issue presented by the text, also not addressed by Professor Teitz, is the choice of title. While "transnational litigation" is not an inaccurate description of the subject matter, its choice rather than the more commonplace "international civil litigation" raises the question of whether there was a particular reason to do so or whether the title suggests an additional subset of international practice. Professor Teitz does not give us a hint. In fact, right from the beginning she seems to use the terms transnational and international litigation interchangeably.³⁰ The truth probably is that

25 See Silberman, *supra* note 6, at 679-80.

26 BORN WITH WESTIN, *supra* note 5.

27 RUSSEL J. WEINTRAUB, INTERNATIONAL LITIGATION AND ARBITRATION: PRACTICE AND PLANNING (1994).

28 ANDREAS F. LOWENFELD, INTERNATIONAL LITIGATION AND ARBITRATION (1993).

29 ANDREAS F. LOWENFELD, INTERNATIONAL LITIGATION AND THE QUEST FOR REASONABLENESS: ESSAYS IN PRIVATE INTERNATIONAL LAW (1996).

30 TEITZ, *supra* note 2, at 1.

there is no widely accepted difference in meaning, and the terms are generally reciprocal in use.

It could be argued, however, that "transnational" more accurately describes the vast majority of undertakings across borders that occur in most cases brought in United States courts.³¹ The American discovery process is certainly a good example. While the author focuses on the attractiveness of U.S. discovery to potential foreign litigants,³² reality appears to be that U.S. litigation involving discovery components well beyond U.S. borders are between purely U.S. parties. These discovery procedures may include securing evidence from former employees, subsidiaries, vendors, experts, customers, and even individual character witnesses.

The term "transnational" in relation to litigation is of fairly recent origin in American jurisprudence, especially from the Supreme Court.³³ There is no real evidence that U.S. courts have considered the term a special term of art. However, courts have recognized transnational as a term to describe various legal questions that run across national borders.³⁴ Writers have used the term for some time in litigation related matters³⁵ and for other legal subjects.³⁶

The reality of the subject matter is, perhaps, something of both the needs of domestic litigators reaching abroad for elements of their case and the broader realm of application of more public international principles such as comity and other matters based more on nation-state relations, such as treaties.³⁷ Transnational litigation may mean to many parties the seeking of witnesses and documents outside

31 "Transnational" does not seem to be a glib, coined term, but rather is accepted to mean simply "extending or going beyond national boundaries." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993).

32 TEITZ, *supra* note 2, 158-62.

33 See Justice Blackmun's use of the term in describing the interplay of community in discovery practices across borders in *Societe Nationale Industrielle Aerospatiale v. United States District Court for the District of Iowa*, 482 U.S. 522, 547 (1987) (Blackmun, J., concurring and dissenting).

34 For example, the act of state doctrine reflects "an effort to maintain a certain stability and predictability in transnational transactions." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 447 (1964) (White, J., dissenting).

35 See Arden McClelland, *International Arbitration: A Practical Guide for the Effectiveness of the System for Litigation of Transnational Commercial Disputes*, 12 INT'L LAW. 83 (1978); Symposium, *Transnational Litigation—Part I*, 18 INT'L LAW. 522 (1984).

36 See Gunther Handl, *State Liability for Accidental Transnational Environmental Damage by Private Persons*, 74 AM. J. INT'L L. 525 (1980).

37 The convergence of traditionally defined private and public international law is described by Professor Maier in transnational litigation. Harold G. Maier, *Extraterritorial Jurisdiction at a Crossroads: An Intersection Between Public and Private International Law*, 76 AM. J. INT'L L. 280 (1982).

the borders of the nation, but to others it could mean the intricacies of dealing with litigation in more than one national jurisdiction, with attendant anti-suit injunctions, and enforcement of foreign judgments.

We will need to see whether future practice better defines what is truly "transnational" in this type of litigation. A good argument can be made that the term best describes those elements of this international litigation practice that requires a reaching across international boundaries for elements or pieces of a case.³⁸ The continuing present usage may leave it as merely legal shorthand for what many have more formally recognized as private international civil litigation.

II. JURISDICTION

The actual arrangement of the materials in the book follows a very logical and traditional progression. The eight chapters are not specifically grouped into the lineal progression of a lawsuit, but the arrangement of the materials is, more or less, what a lawyer might expect when either exploring the possibility of bringing or defending a case involving a transnational element.

Personal³⁹ and subject matter jurisdiction⁴⁰ occupy the first two chapters. These are, of course, two of the most basic matters a careful lawyer will examine closely when faced with a new matter.⁴¹ The next chapter covers another logical early inquiry of the litigation, forum selection and venue.⁴² The arrangement of these initial topics also serves well the potential student. As with domestic civil procedure, the jurisdictional matters and venue questions need early mastering.

The treatment of these issues is comprehensive but suffers from some obvious deficiencies. In the discussion of state long-arm jurisdiction, too much space is wasted on verbatim selections from representative state statutes.⁴³ If the book was meant as a pedagogical tool, its worth will be lost on the practitioner of other than the cited jurisdic-

38 Without a plausible and permanent international tribunal for the adjudication of claims, the view of these problems comes from the vantage point of the domestic (national) tribunals.

39 TERTZ, *supra* note 2, at 5-60.

40 *Id.* at 61-100.

41 All chapters are divided by sections and subsections, with appropriate headings, which allows quick reference to a particular subject. The book contains a detailed Table of Contents (with reference to appropriate pages). There is also an index of contents at the beginning of each chapter (but without a reference to pages within the chapter—which would have been helpful).

42 TERTZ, *supra* note 2, at 101-30.

43 *Id.* at 30-35.

tions. Born and Westin accomplish the same point of illustrating the different state approaches by a simple citation to the appropriate statutes.⁴⁴

The author spends considerable time—and perhaps her best analytical efforts—on the issue of personal jurisdiction in the international context.⁴⁵ Personal jurisdiction of this nature is a complex and dynamic subject. Professor Teitz maneuvers through some of the intricate provisions in such a manner that makes it comprehensible to both the student and experienced practitioner.

A good example of the thoroughness is the discussion of the due process limitations on judicial jurisdiction.⁴⁶ Teitz has tacked together the trail of Supreme Court teaching from *Pennoyer v. Neff*⁴⁷ through *Asahi*⁴⁸ in such a way as to give the reader a good idea of how the jurisprudence has arrived at its present indecisive stage, although without proposing a method of future resolution.⁴⁹ It would have been helpful for both student and practitioners to suggest a method of dealing with the fractured opinion of *Asahi* on the nature of minimum contacts needed within the stream of commerce jurisdictional model.⁵⁰

Another case of jurisdiction jurisprudence touched by the book is the recurring problem of obtaining jurisdiction over a parent or subsidiary through the resident corporate entity within the venue of the litigation.⁵¹ The author does a good job in laying out the basic points of the problem in her discussion of the interplay of the minimum contacts approach of the venerable *International Shoe Co. v. Washington*⁵² test and the stream of commerce theory of *Asahi*.⁵³ Teitz is quite correct when she observes that the treatment of the application of the agency, department, or alter ego theories to the parent-subsidiary ju-

44 BORN WITH WESTIN, *supra* note 5, at 28–30.

45 TEITZ, *supra* note 2, at 5–60.

46 *Id.* at 12–24.

47 95 U.S. 714 (1877).

48 *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102 (1987).

49 The author does deal with some of the lower court constructions of *Asahi*. TEITZ, *supra* note 2, at 20–24.

50 The lack of direction to lower courts has engendered a few suggestions for future change in the transnational jurisdictional model. See Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 GA. J. INT'L & COMP. L. 1 (1987); Raymond Paretzky, *A New Approach to Jurisdictional Questions in Transnational Litigation in U.S. Courts*, 10 U. PA. J. INT'L BUS. L. 663 (1988).

51 TEITZ, *supra* note 2, at 54–56.

52 326 U.S. 310 (1945).

53 TEITZ, *supra* note 2, at 55.

risdictional problem is far from consistent in the lower courts.⁵⁴ Although she attempts to sketch out the recent cases that would give some guidance, some are far from "recent," even at the date of publication.

This little corner of the law of international jurisdiction is in a state of ceaseless activity. Not only are cases fairly fact-bound, but they also constantly state and restate criteria for evaluating the issue, trying to accommodate the vagueness of the direction of the Supreme Court since *Asahi*. For example, the Fifth Circuit⁵⁵ has restated its standard for examining whether a subsidiary is the alter ego of the parent:

- (1) the parent and the subsidiary have common stock ownership;
- (2) the parent and the subsidiary have common directors or officers;
- (3) the parent and the subsidiary have common business departments;
- (4) the parent and the subsidiary file consolidated financial statements and tax returns;
- (5) the parent finances the subsidiary;
- (6) the parent caused the incorporation of the subsidiary;
- (7) the subsidiary operates with grossly inadequate capital;
- (8) the parent pays the salaries and other expenses of the subsidiary;
- (9) the subsidiary receives no business except that given to it by the parent;
- (10) the parent uses the subsidiaries [sic] property as its own;
- (11) the daily operations of the two corporations are not kept separate; and
- (12) the subsidiary does not observe the basic corporate formalities, such as keeping separate books and records and holding shareholder and board meetings.

This statement of guidance for the lower courts is as good as most that have been developed recently by courts. However, absent clearer guidance from the Supreme Court, the law of the circuits on this issue will remain somewhat less than in sync. Lawyers will have to assemble their own check list for the venue of the action and keep it in a constantly updated state, as will Professor Teitz's book.

III. SERVICE

In a relatively short chapter the author focuses on one area of a lawsuit potentially filled with legal landmines and appropriately dan-

⁵⁴ *Id.* at 56.

⁵⁵ *Gundle Lining Constr. Corp. v. Adams County Asphalt, Inc.*, 85 F.3d 201, 208 (5th Cir. 1996).

gerous for the less than careful litigator—service of process.⁵⁶ Unfortunately, the chapter does not expose all of the trip wires. The use of letters rogatory for service is not discussed. It is also not clear, except by a detailed reading⁵⁷ and a single reference in footnote to *Volkswagenwerk Aktiengesellschaft v. Schlunk*,⁵⁸ when the Hague Service Convention must be used by litigators in federal courts.

The author also creates some distracting and complicating factors in her brief discussion of service on a foreign sovereign. It is beyond even the casual reader why the author would set out, *in extenso*, the provisions of the Foreign Sovereign Immunities Act⁵⁹ in a page and a half footnote⁶⁰ rather than relegating such tedious reading to the Appendix, if at all. Also, while her choice of illustrative district court opinions following the discussion of leading precedents may be appropriate, the extensive quotation of state service statutes in footnotes distract again from the smooth reading of the text.⁶¹

The remainder of this section is equally uneven. A decent discussion of service by mail under Article 10 of the Hague Service Convention⁶² is not balanced with a discussion of the alternate method through consular agents under Article 8. Disappointment on this topic is capped by a lack of discussion on the problem presented to a litigator choosing a method of service which is probably not in compliance with foreign law or discussion of the seminal case of *Alco Standard Corp. v. Benalal*.⁶³

IV. DISCOVERY

A much more thorough and accurate section is that dealing with discovery across the U.S. border.⁶⁴ The author has done a credible job of integrating the Federal Rules, Hague Evidence Convention, and statutory materials. The discussion of the problems raised by the Supreme Court's less than satisfactory decision in *Societe Nationale Industrielle Aerospatiale v. United States District Court for the District of Iowa*⁶⁵ and the non-exclusive nature of the Hague Evidence Convention is

56 TEITZ, *supra* note 2, at 131–55.

57 *Id.* at 137, 147.

58 486 U.S. 694 (1988).

59 28 U.S.C. § 1608 (1994).

60 TEITZ, *supra* note 2, at 145–46.

61 *E.g., id.* at 138 n.37.

62 *Id.* at 150–53.

63 345 F. Supp. 14 (E.D. Pa. 1972).

64 TEITZ, *supra* note 2, at 157–204.

65 482 U.S. 522 (1987).

good, but still merely declarative. The author does not offer any new insights.

The text is thorough enough to cover an often overlooked provision that grants foreign litigants assistance in U.S. courts.⁶⁶ Again, without taking sides, the author notes the current controversy over whether the material or testimony sought in the U.S. court would be discoverable in the national courts of the requesting venue.⁶⁷ Overlooked, however, is the possibly lingering question over whether the U.S. courts should allow discovery where the requesting venue does not reciprocate.⁶⁸ The Second Circuit's suggestion that the district court oversee the parties' exchange of information to insure fairness needs to be explored more fully.⁶⁹

V. MULTIPLE SUITS

Professor Teitz's review of one problem of handling proceedings involving roughly the same subject matter in multiple jurisdictions is concise, accurate, and current. Since there is no prohibition in instituting proceedings in more than one jurisdiction, no central international tribunal for the purely private dispute, and no guarantee that a dispute will have only one aggrieved party who will seek vindication in a forum of its own choosing, national courts will have to sort out multiple adjudications for the foreseeable future.

The American response to the problem has been less than satisfying. As the author correctly cites,⁷⁰ the Fifth Circuit recently assembled the competing legal standards to be employed to decide whether

66 See 28 U.S.C. § 1782 (1994) (stating that a "person may not be compelled to give his testimony, or to produce a document or other thing in violation of any legally applicable privilege").

67 TEITZ, *supra* note 2, at 200. See also Peter Metis, Note, *International Judicial Assistance: Does 28 U.S.C. § 1782 Contain an Implicit Discoverability Requirement?*, 18 FORDHAM INT'L L.J. 332 (1994); Jeffrey A. Wortman, Note, *In Search of Discovery: The Split Between the Circuits Surrounding a Threshold Discoverability Requirement to Provide Assistance Under 28 U.S.C. § 1782*, 30 TEX. INT'L L.J. 583 (1995).

68 Compare *Euromepa S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095 (2d Cir. 1995), and *John Deere Ltd. v. Sperry Corp.*, 754 F.2d 132 (3d Cir. 1985) with *In re Letter Rogatory*, 42 F.3d 308 (5th Cir. 1995), and *In re Request for Judicial Assistance*, 428 F. Supp. 109, 112 (N.D. Cal. 1977), *aff'd*, 555 F.2d 720 (9th Cir. 1977). Unfortunately, much of the discussion in the few cases which address this issue blend into one the concepts of discoverability and reciprocity. The author could have advanced the issue by questioning whether any congressional intent to encourage international reciprocity in the discovery arena has been fruitful.

69 *Euromepa*, 51 F.3d at 1102; see also Richard D. Haygood, Note, *Euromepa v. Esmerian: The Scope of the Inquiry into Foreign Law When Evaluating Discovery Requests Under 8 U.S.C. § 1782*, 20 N.C. J. INT'L L. & COM. REG. 491 (1996).

70 TEITZ, *supra* note 2, at 247.

a U.S. court should enjoin an action in another venue.⁷¹ Tension remains between the decisions of those courts that lean in favor of enjoining parties before it from prosecuting a suit abroad and those of courts more concerned with the implementation of comity among nations and their courts. The split is not settled, as the Fifth Circuit makes clear.⁷² The future course of the courts must join the long queue of issues to be resolved by the Supreme Court. However, the majority's position in the Fifth Circuit's *Kaepa, Inc. v. Achilles Corp.* decision deserves more attention to the extent that it calls for a type of balancing approach to the question.⁷³ The factors include the extent to which public international interests are implicated, contacts to the subject venue, and the extent of "absurd duplication of effort."⁷⁴ Absent a strong interest that goes beyond the private dispute of the litigants, courts shall use their best attempts to weigh the utility of allowing parties to exhaust the limited resources of courts and other parties.

VI. JUDGMENTS

The final section of the book on the recognition and enforcement of judgments is particularly well done. This topic has the potential of becoming a cottage industry within the field of transnational litigation. Issues form a honeycomb of trouble for the unwary litigator. The author sufficiently touches all of them, and only a few deserve any additional comment.

Professor Teitz sets forth the elements of successful recognition on enforcement of a judgment in U.S. courts, together with the potential defenses. What could be stressed more, for both the new student and litigator, is the real relationship between decisions made early in the litigation to the ultimate enforceability of a foreign judgment. Personal jurisdiction is a good example. The author correctly points out the necessity of this element of the case to an enforceable judgment, especially to a default judgment;⁷⁵ but she fails to cross-refer-

⁷¹ *Kaepa, Inc. v. Achilles Corp.* 76 F.3d 624, 626-27 (5th Cir. 1996).

⁷² The thrust of a number of circuits toward the wider recourse to comity and restriction of the use of the anti-suit injunction was encapsulated in the forceful dissent of Judge Garza in *Kaepa*, 76 F.3d at 628-34.

⁷³ *Kaepa*, 76 F.3d at 627.

⁷⁴ *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 430-31 (7th Cir. 1993).

⁷⁵ TEITZ, *supra* note 2, at 263.

ence this discussion to the original substantive discussion of the topic.⁷⁶

The continuing debate on reciprocity as a requirement of enforcement of a foreign judgment is adequately discussed.⁷⁷ However, as with any remaining question of reciprocal treatment of discovery under 28 U.S.C. § 1782, the author does not suggest a litigation strategy or argument that can be made to exploit or force a better definition of the issue. The poignancy of the point is driven home in the same chapter when the author discusses the fact that many countries, including significant trading partners of the United States, "require some degree of reciprocity for recognition of a foreign judgment."⁷⁸

These factors, as they affect both discovery and judgments, would seem to suggest that the legislative and judicial comity-based theories of trying to encourage reciprocal treatment abroad should at least be questioned. As we move into the next millennium, well past the centennial of *Hilton v. Guyot*,⁷⁹ it appears to be time to seriously reconsider these critical relations with other national courts. The time is ripe for serious consideration of a more normative link in this transnational system of resolving disputes.⁸⁰

VII. CONCLUSION

All in all, Louise Teitz has produced a fine book, which fills a real need in the literature on transnational litigation. She succeeds in showing that "concepts seen in purely domestic disputes are transformed by forces that play only a minimal role in shaping domestic rules."⁸¹ The book goes a long way through its systematizing of the precedents to establish transnational litigation as a distinct discipline.

The dynamics of the field are such that a pocket part will be a useful addition before long. The deficiencies of the work can be remedied in the second edition. It is a volume worthy of the library of the serious practitioner or student of the subject matter.

76 *Id.* at 5-60. The reader of the main section on personal jurisdiction should not be left uninformed of such significance until the end of the work.

77 *Id.* at 273-74.

78 *Id.* at 287.

79 159 U.S. 113 (1895).

80 For a good rendition of some of the rather recent efforts to resolve the uncertainty in the system and some of the continuing legal and political blockades, see Matthew Adler, *If We Build It, Will They Come?—The Need for a Multilateral Convention on the Recognition and Enforcement of Civil Monetary Judgments*, 26 LAW & POL'Y INT'L BUS. 79 (1994). A more ambitious and detailed approach is found in Geoffrey C. Hazard, Jr. & Michele Taruffo, *Transnational Rules of Civil Procedure*, 30 CORNELL INT'L L.J. 493 (1997).

81 TEITZ, *supra* note 2, at 1.